D.B. CIVIL SPECIAL APPEAL (W) No.105/2007

The Municipal Corporation, Jaipur & Anr.
Vs.
Ramesh Chand Bharwal

Date of Order :: 02-05-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri H.V. Nandwana Dy.G.A. for the appellants.
Shri Mukesh Meena for the respondent.

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This special appeal is directed against the order of the learned Single Judge dated 31.1.2005 in S.B. Civil Writ Petition no.1336/2005 allowing the writ petition of the respondent with a direction “to consider his application for allotment of plot of 'C' category, and in case plots of 'C' category have been allotted to other persons, to consider his application for allotment of plot of the same size and area in some other scheme”. The appellants were also directed to pay Rs.5,000/- as cost of litigation to the respondent.

The dispute relates to allotment of a plot of land under Gandhi Vihar Residential Scheme (near Sanganer Airport) at Jaipur. The respondent indisputably deposited Rs.10,000/- for such allotment on 29.10.1993. The case of the appellants is that after allotment of limited plots no plot was available with the Corporation which could be allotted to the respondent. It is said that in such situation several

applicants filed application for refund of the amount. The respondent also did the same.

There is a dispute about the respondent's submitting application for refund. Pursuant to our order dated 7.3.2007, counsel for the appellant produced the file from perusal of which it appears that application said to be filed by the respondent for refund of the amount is not available but there are notings in the file which suggest that application for refund was submitted on or about 5.8.1994 and the same was processed in the office at different levels, and finally order was passed on 23.8.1994 to refund the amount after deducting 5% of the deposit as per the terms and conditions of the advertisement. The file, as a matter of fact, contains record of all such applications for refund and having looked into the same, we have no doubt about the authenticity of the record. We are satisfied that the respondent did submit application for refund notwithstanding that the application is not available in the file. We do not wish to go into the circumstances in which the application is missing from the file.

After hearing counsel for the parties, we are of the view that there being no plot available under the Gandhi Vihar Residential Scheme, in the absence of another similar scheme by the Corporation for allotment, the learned Single Judge was not justified

in issuing direction for allotment of 'C' category plot or similar plot in some other scheme, and the direction is fit to be set aside. In the circumstances, the cost part of the order also cannot be sustained.

We accordingly set aside the order of the learned Single Judge; in stead dispose of the writ petition, indeed this appeal too, by directing the appellants to refund Rs.9,500/- (after deducting 5% of the amount deposited) with interest @ 12% per annum from the date of deposit i.e. 29.10.1993 within four weeks of the production/receipt of a copy of this order.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-